IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

DAVID DALE STEVENS, JR.

Plaintiff,

v.

CIVIL ACTION NO. 2:17-cv-01349
JUDGE _____

UNITED STATES OF AMERICA,

Defendant.

COMPLAINT

1. The Plaintiff, David Dale Stevens, Jr., is a resident of Logan County, West Virginia, and has resided there at all times as alleged herein.

2. The Defendant the United States of America, through the U. S. Department of Health and Human Services, at all times alleged herein is the federal governing body responsible for controlling, supervising and managing the business affairs of its public health care provider, Lincoln Primary Care. Included within the duties and responsibilities of the U. S. Department of Health and Human Services is the oversight and supervision of its employee/agent physicians, employees/agent nurse practitioners, employee/agent physician assistants.

3. The Federal Tort Claims Act, 28 U.S.C.S. §1346(b) and §§2671-2680 provides that any action for medical malpractice against Public Health Service employees may be filed against the United States of America once all administrative remedies have been

exhausted. The Plaintiff has exhausted all administrative remedies and, while the Plaintiff received acknowledgment of his claim, he received no other document within the time allotted.

4. Plaintiff has complied with the filing requirements set forth in West Virginia Code §55-7B-6.

5. On or about June 19, 2014, the Plaintiff sought medical treatment from Lincoln Primary Health.

6. On June 19, 2014, the Plaintiff exhibited signs, symptoms, and complaints of high blood pressure, severe headaches, and bradycardia. He was diagnosed with hypertensive disorder. No funduscopic examination was documented.

7. Subsequent to that time, and on June 24, 2014, the Plaintiff presented to Logan Regional Medical Center Emergency Department with increased complaints, signs, and symptoms of elevated blood pressure for two week, real bad headaches, near syncope head rushes when standing, blurry vision, and nausea. Plaintiff was discharged from Logan Regional Medical Center without a funduscopic examination.

8. The following day, June 25, 2014, the Plaintiff sought treatment again from Lincoln Primary Care with complaints, symptoms, and signs of nausea, vomiting, blurred vision, foggy vision, ears feel pressured, popping noises in his ear, vertigo, neck tenderness and reported that he had been to the emergency department the day before. He was diagnosed with vertigo and neck sprain and released.

9. He returned to the emergency department at Logan Regional Medical Center on June 29, 2014, with complaints, signs, and symptoms of increased dizziness and headache, to the point he thought he was dying, blurred vision, and tunnel vision. He was

discharged from Logan Regional Medical Center and given a referral to a neurologist, which could not be scheduled for several weeks.

10. Due to his condition, the Plaintiff returned again to Lincoln Primary Care with complaints, signs, and symptoms of vision change, vertigo, and severe headaches. A funduscopic examination was performed with a report of normal vessels and optic disc.

11. Subsequent to that time and approximately one week later, Mr. Stevens was diagnosed with papilledema-bilateral, third nerve palsy-partial, acute headache, decreased vision, and transferred to West Virginia University Hospital where he was diagnosed and treated for pseudotumor cerebri.

12. The Plaintiff was not examined by a physician at Lincoln Primary Care at any time.

13. Lincoln Primary Care's employees were negligent in practicing below the applicable standard of care in the medical treatment and care provided to David Stevens as aforesaid and negligence in their lack of care and treatment and committed medical malpractice and were negligent in their care and lack of care and treatment of David Stevens, failing to perform an indicated and appropriate funduscopic examination, which should have revealed papilledema.

14. Lincoln Primary Care's agents and employees further breached the standard of care during the July 2, 2014, office visit by failing to perform an accurate funduscopic examination, which would have reveal papilledema.

15. The papilledema would have been visible during an accurate funduscopic examination for several weeks prior to Mr. Stevens' first visit to Lincoln Primary Care. As a

result of the delayed treatment and failure to treat, Mr. Stevens suffered permanent, significant vision impairment and is legally blind.

16. The United States of America is liable for the negligence of its respective public health service employees who were employees and agents of Lincoln Primary Care.

17. As a direct and proximate result of the negligence, carelessness, recklessness, incompetent management, and deviation from the appropriate standard of medical care by the agents and employees of Lincoln Primary Care, the Plaintiff, David Dale Stevens, Jr., has suffered and will continue to suffer significant and life altering permanent injury, including significant and permanent loss of vision, loss of income as he was gainfully employed at the time, and will continue to suffer lost income in the future, has sustained an impairment of the ability to enjoy life, mental anguish, has suffered annoyance, aggravation, humiliation, inconvenience, all in the past and future; and therefore seeks all damages allowable under West Virginia law.

THE PLAINTIFF FURTHER DEMANDS A TRIAL BY JURY.

David Dale Stevens, Jr.

By Counsel

/ s/ William M. Tiano
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